

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

GREG MONACO,

Plaintiff,

VS.

MULTNOMAH COUNTY, a governmental entity, LEGACY HEALTH, an Oregon non-profit corporation, LEGACY EMANUEL HOSPITAL & HEALTH CENTER, an Oregon non-profit corporation dba UNITY CENTER, and CHRIS FARENTINOS, an individual,

Defendants.

No.

COMPLAINT

Retaliation – ORS 441.057, ORS 659A.030, ORS 659A.199, ORS 659A.203, ORS 659A.233; Intentional Interference with Economic Relations; Aiding and Abetting

Damages Sought In An Amount Not To Exceed \$1,100,100.00.

Filing fee: ORS 21.160(1)(d)

Not Subject to Mandatory Arbitration

Jury Trial Requested

Plaintiff alleges as follows:

1.

Defendant Multnomah County (“the County”) is a county government existing under the laws of the State of Oregon, with its principal offices located at 501 SE Hawthorne Blvd, Portland, Oregon 97214.

2.

At all times material hereto, Plaintiff Greg Monaco (“Monaco”) was and is a resident of Multnomah County, State of Oregon.

3

At all times material hereto, the County operated and administered the Multnomah County

1 Department of Health (“Health Department”) as a subdivision of the County entity, as well as the
2 Mental Health and Addiction Services Division (“Mental Health Division”) as an office within the
3 Health Department. The Health Department owns and operates healthcare facilities.

4 4.

5 At all times material hereto, Defendants Legacy Health and Legacy Emanuel Hospital &
6 Health Center (“Legacy Emanuel”), *d.b.a.* Unity Center for Behavioral Health, were domestic non-
7 profit corporations organized under the laws of the State of Oregon, and with their headquarters and
8 principal places of business located in Multnomah County, State of Oregon. Defendant Legacy
9 Emanuel is part of a network of affiliated hospitals owned, organized and/or managed by Defendant
10 Legacy Health.

11 5.

12 Monaco was hired by the County in or about 1992 as a Pre-Commitment Investigator
13 (“PCI”) within the Mental Health and Addiction Services Division. Monaco negotiated a seniority
14 date in or about 1987 based on prior work with another clinic. Monaco’s role as a PCI involved
15 assessing mental health patients at various medical facilities who had been placed on involuntary
16 hold, and then making recommendations as to whether the state should proceed with a commitment
17 hearing for the patient.

18 6.

19 As part of Monaco’s role, he evaluated patients at Multnomah County health care facilities.
20 Monaco’s position required that he report issues of patient safety or other violations of law, rule, or
21 regulation that he observed at facilities where he evaluated patients.

22 7.

23 At all times material to this Complaint, Defendants Legacy Health and Legacy Emanuel
24 (collectively “Legacy Defendants”) developed, owned and/or operated a specialty hospital under
25 the assumed business name Unity Center for Behavioral Health (“Unity”). Other Portland-area
26 hospital organizations including Portland Adventist Medical Center, Kaiser, and Oregon Health &

1 Science University merged certain operations in to the Unity center, which was owned and
2 administered by Legacy Defendants. The purpose of Unity was to divert psychiatric patients from
3 regular emergency rooms to a more specialized facility to receive more focused and immediate
4 care.

5 8.

6 In late 2016, Legacy Defendants were deep in preparations for the opening of the Unity
7 facility, originally planned for early January 2017. In or about November 2016, Monaco spoke with
8 Cindy Sherba, then-manager in OHSU's psychiatric unit who was set to assume the role of Deputy
9 Director at Unity once that facility opened. In that conversation, Monaco expressed concerns about
10 the structure and implementation of the planned Unity facility. At that time Monaco also informed
11 his supervisor, Bill Osborne, about those same concerns.

12 9.

13 In early January of 2017, the opening of Unity was delayed after Unity failed inspections.
14 Monaco reported this delay and problems that caused it to Multnomah County Auditor Steve March
15 ("Auditor"). Monaco also reported to March that hospitals were scrambling to cover the gap and
16 that patients were being harmed by being retained at hospitals.

17 10.

18 On or about January 14, 2017, Monaco reported his concerns about mental health patients
19 impacted by Unity's delayed opening to Osborne, and he requested that the County monitor the
20 number of patient holds at emergency departments on account of the Unity delay. Monaco received
21 no response to his request.

22 11.

23 On or about January 31, 2017, Unity finally opened. Within several days of its opening,
24 Monaco arrived on site to fulfill his PCI duties. There, Monaco observed significant problems with
25 the facility in areas including structure, staffing, staff training, and other areas threatening patient
26 safety. From the time of opening and continuing thereafter, Monaco heard Unity nurses raise

1 complaints about understaffing, poor management, inappropriate injections, and safety concerns, as
2 well as a culture of retaliation against any nurses who complained about health and safety risks
3 faced by patients and staff. Nurses related to Monaco how no positive action appeared to be taken
4 by Unity in response to internal staff complaints.

5 12.

6 Monaco regularly reported these concerns to the Auditor as he became aware of them. On
7 February 22, 2017, Monaco again raised his concerns about patient safety at Unity and in
8 emergency rooms, and informed the Auditor of his previous request to Osborne for County
9 oversight of those facilities, which Osborne had ignored. The following day, Monaco relayed to the
10 Auditor his own fear of retaliation from County for expressing his views on Unity. The Auditor
11 suggested that Monaco consider taking early retirement.

12 13.

13 On or about May 1, 2017, Monaco again reported the concerns that he had with health and
14 safety issues at Unity to Osborne. Osborne replied “it’s their liability, not ours.” At or about this
15 time, Osborne also stated that “Unity is too big to fail.” Based on these dismissive assertions from
16 Osborne, Monaco concluded that he needed to find other avenues to address serious concerns about
17 Unity.

18 14.

19 From about May 6, 2017 through May 18, 2017, Monaco exchanged emails with Chris
20 Farentinos, the Director of Unity. Monaco copied Osborne on those emails, as well as the Auditor
21 and then-Health Department Director JoAnne Fuller. In those emails, Monaco raised issues he had
22 witnessed and/or that had been reported to him concerning Unity, including the overuse of forceful
23 codes and improper injection practices. Farentinos sought the names of Monaco’s nursing staff
24 sources, but he declined to provide them. On information and belief, Legacy Health and/or Legacy
25 Emanuel management complained to management at County and Health Department about
26 Monaco’s actions in raising concerns about Unity.

1 15.

2 On or about May 19, 2019, Monaco was subjected to a disciplinary meeting with County
3 superiors. On or about May 26, 2017, Monaco was reprimanded by Dentinger and Osborne.
4 Dentinger and Osborne insisted that the County had no oversight role or interest in Unity, and
5 forbade Monaco from contacting Director Farentinos again. When asked to whom Unity patients
6 and nurses should go if they felt mistreated, Osborne stated that patients should report to Quality
7 Management at Unity. Monaco inquired why he was being reprimanded at that time, when Osborne
8 had not objected to the emails to Farentinos at the time they were sent. Osborne replied that
9 “[Farentinos] didn’t complain before.”

10 16.

11 Following the May 26, 2017 reprimand, Monaco reported the circumstances of that
12 reprimand to the Auditor, and shared what he knew about Farentinos’ complaints to County about
13 Monaco’s health and safety reports.

14 17.

15 On or about June 28, 2017, County supervisors informed Monaco that he faced discipline
16 for an alleged HIPAA violation, and that he was under investigation.

17 18.

18 On or about June 29, 2017, Monaco overheard a conversation between Dentinger and
19 Osborne in Osborne’s cubicle, where Dentinger mentioned Monaco by name, and told Osborne that
20 they were going to meet with County human resources to “take care of him.” Osborne replied
21 “cool.” From the context it was clear to Monaco that Dentinger was referring to taking adverse
22 action against him. Monaco immediately reported this overheard conversation to County
23 management.

24 19.

25 Following these comments from Osborne, Monaco feared that any further reports
26 concerning issues at Unity would compromise his employment with the County.

1 20.

2 By early 2018, Monaco continued to learn of serious problems and continuing health and
3 safety issues at Unity, including conditions and practices dangerous to patients and staff, and a
4 pattern of retaliatory action at Unity against whistleblowing staff members. Despite a continuing
5 policy asserted by County managers to not provide oversite over issues raised about Unity, Monaco
6 again raised concerns about Unity to the Auditor as well as managers and leadership. When
7 Monaco raised concerns, he faced significant pushback. This pushback included criticism when
8 Monaco elevated reports to higher managers, and instructions that he instead report to direct
9 supervisors who had already shown, by direct statements as well as conduct, that they would take
10 no action on those reports. Pushback also included growing pressure for Monaco to leave his job,
11 including comments from Osborne asking Monaco “when are you going to retire?”

12 21.

13 In or about April 2018, PCIs received a pay raise in the amount of \$2 per hour. At about that
14 time, several of Monaco’s team members were informed by Neal Rotman’s staff person that there
15 was a plan to cut the PCI team in order to compensate for the pay increase. Monaco wrote to Travis
16 Graves of County Human Resources, County Chair Deborah Kafoury, the Auditor and to union
17 personnel questioning the legitimacy of the decision and asserting that it seemed to constitute
18 retaliation for Monaco’s advocacy for that raise.

19 22.

20 Shortly after learning of the planned cut, Monaco learned that the staff person faced
21 discipline for sharing that information, and that Rotman had referred to the staff person as a “big
22 mouth.” Monaco reported the discipline to senior County management and said that it was a further
23 example of retaliation within the mental health division.

24 23.

25 On or about May 9, 2018, Monaco reported a patient death at Unity to County Quality
26 Manager Joan Rice. Rice responded “thanks, we’ll wait to hear from Unity.” When Monaco

1 requested clarification, Rice explained that Unity would be required to report if the death happened
2 at their physical facility, but not if it happened after a patient was transferred out to a different
3 facility. Rice took no other immediate action to follow up on Monaco's report.

4 24.

5 On or about May 24, 2018, Monaco met with Steve Herron with the County's human
6 resources. In the meeting, Monaco raised various concerns about retaliatory practices at the County
7 as well as ineffectual oversight procedures. Monaco expected Herron to follow up on that meeting
8 with further inquiry or ameliorative action, but no action was taken.

9 25.

10 Through May of 2018, Monaco faced continuing pressure to take an early retirement,
11 including statements made by superiors in response to his raising safety complaints about healthcare
12 facilities. At the same time, Monaco felt that the public interest required him to report and elevate
13 the continuing serious health and safety issues that he learned of concerning Unity. Monaco
14 concluded that the only way he could be free to report the dangerous and unlawful conduct at Unity
15 and other facilities was to resign his employment. Monaco was not offered on-call or contract hours
16 as was common practice for County retirees. At that time, Monaco had planned to work until about
17 the age of 65, or about February of 2020. On or about June 15, 2018, he submitted his official early
18 retirement notice, with an effective date of July 31, 2018.

19 26.

20 Defendant County created and maintained intolerable work conditions at least in part
21 because of Monaco's opposition to unlawful practices, as described above. Defendants desired to
22 cause Plaintiff to leave employment, and Defendants knew or should have known that these
23 conditions were so intolerable that a reasonable person would be substantially certain to leave
24 employment as a result of those conditions.

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26 ///

FIRST CLAIM FOR RELIEF

Retaliation for Opposing Unlawful Conduct or Practices – ORS 659A.030

Against Defendant Multnomah County

27.

Plaintiff realleges and incorporates paragraphs 1 through 30 above.

28.

Legacy Defendants' conduct as alleged above violated ORS 659A.030(1)(f) when they retaliated against Plaintiff because of his opposition to unlawful practices, as described herein. Such retaliatory conduct includes, but is not limited to, adverse employment actions including retaliatory discipline and/or constructive discharge.

29

As a direct and proximate result of Defendants' retaliation, Plaintiff has suffered economic damages including but not limited to present and future lost wages, loss of benefits, loss of job opportunities, and injury to professional reputation in the amount of \$500,000, subject to amendment at and before trial to conform to available evidence.

30.

As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has been subjected to humiliation, fear, pain and suffering, anxiety and emotional distress entitling him to an award of noneconomic damages in the amount of \$600,000, subject to amendment at and before trial to conform to available evidence.

31.

Pursuant to ORS 659A.885 and ORS 20.107, Plaintiff is entitled to an award of reasonable attorney fees and costs incurred in the exercise of this action.

SECOND CLAIM FOR RELIEF

Retaliation for Reporting Unlawful Conduct – QRS 659A.199

Against Defendant Multnomah County

32.

Plaintiff realleges and incorporates paragraphs 1 through 30 above.

33.

Defendants' conduct as alleged above violated ORS 659A.199 when they retaliated against Plaintiff because of his good faith reports of unlawful conduct as described herein. Such retaliatory conduct includes, but is not limited to, adverse employment actions including retaliatory discipline and constructive discharge.

34.

As a direct and proximate result of Defendants' retaliation, Plaintiff has suffered economic losses including but not limited to present and future lost wages, loss of benefits, loss of job opportunities, and injury to professional reputation in the amount of \$500,000, subject to adjustment at and before trial to conform to available evidence.

35.

As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has been subjected to humiliation, fear, pain and suffering, anxiety and emotional distress entitling him to an award of noneconomic damages in the amount of \$600,000, subject to amendment at and before trial to conform to available evidence.

36.

Pursuant to ORS 659A.885 and ORS 20.107, Plaintiff is entitled to an award of reasonable attorney fees and costs incurred in the exercise of this action.

THIRD CLAIM FOR RELIEF

Public Employee Whistleblower Retaliation – ORS 659A.203

Against Defendant Multnomah County

37.

Plaintiff realleges and incorporates paragraphs 1 through 30 above.

1 38.

2 Defendant's conduct as alleged above violated ORS 659A.203 when they engaged in
3 retaliatory conduct including:

4 • Prohibiting Monaco from disclosing, taking disciplinary action against Monaco for
5 disclosing, and/or threatening to take disciplinary action against Monaco for disclosing
6 information he reasonably believed to be evidence of violations of law, rule, or regulation;
7 • Prohibiting Monaco from disclosing, taking disciplinary action against Monaco for
8 disclosing, and/or threatening to take disciplinary action against Monaco for disclosing
9 information he reasonably believed to be evidence of mismanagement, abuse of authority, or
10 substantial and specific danger to public health and safety resulting from Defendant's
11 actions; and
12 • Discouraging, restraining, dissuading, coercing, preventing or otherwise interfering with
13 disclosures or discussions as alleged herein.

14 39.

15 As a direct and proximate result of Defendants' retaliation, Plaintiff has suffered economic
16 damages including but not limited to present and future lost wages, loss of benefits, loss of job
17 opportunities, and injury to professional reputation in the amount of \$500,000, subject to
18 amendment at and before trial to conform to available evidence.

19 40.

20 As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has been
21 subjected to humiliation, fear, pain and suffering, anxiety and emotional distress entitling him to an
22 award of noneconomic damages in the amount of \$600,000, subject to amendment at and before
23 trial to conform to available evidence.

24 ///

25 41.

26 Pursuant to ORS 659A.885 and ORS 20.107, Plaintiff is entitled to an award of reasonable

1 attorney fees and costs incurred in the exercise of this action.

2

FOURTH CLAIM FOR RELIEF

3 Retaliation for Reporting Unlawful Conduct by Healthcare Facilities – ORS 659A.233

4 Against Defendant Multnomah County

5 42.

6 Plaintiff realleges and incorporates paragraphs 1 through 30 above.

7 43.

8 Defendants' conduct as alleged above violated ORS 659A.233 when they retaliated against

9 Plaintiff because of his good faith reports of unlawful conduct involving healthcare facilities and/or
10 nursing staff, as described herein. Such retaliatory conduct includes, but is not limited to, adverse
11 employment actions including retaliatory discipline and/or constructive discharge.

12 44.

13 As a direct and proximate result of Defendants' retaliation, Plaintiff has suffered economic
14 damages including but not limited to present and future lost wages, loss of benefits, loss of job
15 opportunities, and injury to professional reputation in the amount of \$500,000, subject to
16 amendment at and before trial to conform to available evidence.

17 45.

18 As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has been
19 subjected to humiliation, fear, pain and suffering, anxiety and emotional distress entitling him to an
20 award of noneconomic damages in the amount of \$600,000, subject to amendment at and before
21 trial to conform to available evidence.

22 46.

23 Pursuant to ORS 659A.885 and ORS 20.107, Plaintiff is entitled to an award of reasonable
24 attorney fees and costs incurred in the exercise of this action.

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26 ///

FIFTH CLAIM FOR RELIEF

Aiding and Abetting – ORS 659A.030

Against Defendants Legacy Health, Legacy Emanuel and Farentinos

47.

Plaintiff realleges and incorporates paragraphs 1 through 30 above.

48.

8 Legacy Defendants' conduct as alleged above violated ORS 659A.030(1)(f) when they
9 retaliated against Plaintiff because of his opposition to unlawful practices, as described herein. Such
10 retaliatory conduct includes, but is not limited to, adverse employment actions including retaliatory
11 discipline and/or constructive discharge.

49.

13 As a direct and proximate result of Defendants' retaliation, Plaintiff has suffered economic
14 damages including but not limited to present and future lost wages, loss of benefits, loss of job
15 opportunities, and injury to professional reputation in the amount of \$500,000, subject to
16 amendment at and before trial to conform to available evidence.

50.

18 As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has been
19 subjected to humiliation, fear, pain and suffering, anxiety and emotional distress entitling him to an
20 award of noneconomic damages in the amount of \$600,000, subject to amendment at and before
21 trial to conform to available evidence.

51.

23 Pursuant to ORS 659A.885 and ORS 20.107, Plaintiff is entitled to an award of reasonable
24 attorney fees and costs incurred in the exercise of this action.

25 //

26 //

SIXTH CLAIM FOR RELIEF

Intentional Interference with Economic Relations

Against Defendants Legacy Health, Legacy Emanuel, and Farentinos

52.

Plaintiff realleges and incorporates paragraphs 1 through 37 above.

53.

As alleged herein, Plaintiff and Defendant Multnomah County entered into a contract of payment in or about 1987, with that contract and/or successor contracts in place and in force as of July 31, 2018.

54.

Defendants Legacy Health, Legacy Emanuel, and Farentinos intentionally interfered with professional relationship between Plaintiff and Defendant Multnomah County when they d complaints about Plaintiff's whistleblower activities to Plaintiff's supervisors and to ers with Defendant Multnomah County who exercised authority over Plaintiff's employment. complaints were made for the improper purpose of suppressing inquiry, investigation, or on into conditions at the Unity Center for Behavioral Health which presented a health and risk to staff and patients.

55.

At the time that Defendant Farentinos made complaints concerning Plaintiff to management defendant Multnomah County, she was acting within the scope of her employment as Director of pursuant to the authority granted her by Legacy Defendants, and for the purpose of serving gacy Defendants. Defendants Legacy Health, Legacy Emanuel, and Farentinos were not to the contract between Plaintiff and Defendant Multnomah County, and were not parties to contractual relationship with those contractual parties relating to that employment relationship.

111

56.

1 As a direct and proximate result of Defendants' retaliation, Plaintiff has suffered economic
2 damages including but not limited to present and future lost wages, loss of benefits, loss of job
3 opportunities, and injury to professional reputation in the amount of \$500,000, subject to
4 amendment at and before trial to conform to available evidence.

57.

6 As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has been
7 subjected to humiliation, fear, pain and suffering, anxiety and emotional distress entitling him to an
8 award of noneconomic damages in the amount of \$600,000, subject to amendment at and before
9 trial to conform to available evidence.

10 58.

11 Plaintiff is entitled to an award of reasonable attorney fees and costs incurred in the exercise
12 of this action as available at law.

PUNITIVE DAMAGES

14 Defendants' actions were outrageous, malicious, and reckless, entitling Plaintiff to an award
15 of punitive damages. Plaintiff hereby gives notice of intent to amend the complaint to seek punitive
16 damages.

DEMAND FOR JURY TRIAL

18 Plaintiff hereby requests a jury trial on all triable claims and issues herein.

19
20 WHEREFORE, Plaintiff prays as follows:

21 1. An award of economic damages including Plaintiff's lost wages, loss of benefits, loss of
22 job opportunities, and injury to professional reputation in the amount of \$500,000;
23 2. An award of noneconomic damages in the amount of \$600,000;
24 3. Attorney fees and costs and disbursements pursuant to ORS 659A.885, and/or ORS
25 20.107;
26 4. Pre-judgment and post-judgment interest as appropriate and allowed by law;

1 5. On all claims, as applicable, amounts necessary to offset the income tax consequences of
2 receiving a lump sum payment, rather than receiving a payment of wages over the
3 applicable time frame;

4 6. Injunctive relief ordering that Defendants cease and desist their illegal practices under
5 each claim above cited, and that Defendants carry out and institute policies, practices,
6 and programs designed to ensure that such violations are not repeated in the future; and
7 7. Any and all other relief as this court may deem proper.

8
9 DATED: March 29, 2019.

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